

REMARKS

This Response is to the final Office Action mailed on November 9, 2006.

I. STATUS OF THE CLAIMS

Claims 1-8, 18-31 and 61-65 (as renumbered) were canceled previously without prejudice or disclaimer. Claims 9-17 and 32-60 are presently pending in the application. It is believed that no fees are due in connection with this Response, however, please charge Deposit Account No. 02-1818 for any fees deemed owed.

II. CLAIMS REJECTIONS

In the Office Action, Claims 9-12, 15-17, 32-41, 43-49 and 52-59 were rejected under § 103(a) as being obvious in view of Scholarly Review ASIAO Journal article authored by Roberts et al. ("the *Roberts Article*") and U.S. Patent No. 3,545,438 to DeVries ("*DeVries*"). Claims 13, 14, 42, 50, 51 and 60 were rejected under U.S.C. § 103(a) as being obvious over the *Roberts Article*, *DeVries* and in further view of U.S. Patent No. 5,631,025 to Shockley et al. ("*Shockley*").

Regarding the §103 rejection the *Roberts Article* and *DeVries*, the *Roberts Article* admittedly does not teach the branched reservoir of the claims. See Office Action, p. 5, lines 1-5. As noted in the Office Action, *DeVries* teaches a reservoir circulation tank 16 that is part of the closed loop, i.e. in the closed loop circuit, with a reservoir 44 for exhausted or spent dialysis solution. See *DeVries*, col. 2, lines 34-38. The spent reservoir 44 of *DeVries* is a spillover or drain tank not in controlled flow communication with a cyclor or circulator. Solenoid valve 42 of *DeVries* is opened to allow fluid to gravity flow from deleting tank 36 to spent reservoir 44 (col. 4, line 14-18). Solenoid valve 30 is opened to allow gravity flow of fluid from reservoir tank 16 to spent reservoir 44 (col. 2, lines 34-41). Uncontrolled overflow fluid can also flow from reservoir tank 16 through overflow conduit 28 to spent reservoir 44, a drain tank. The flowrate is uncontrolled because solenoid valves function by simply opening or closing, and do not control the rate of flow by partially opening or closing the valve.

Pump 50 pumps fluid from tank 16 to the patient (col. 3, line 69), but does not pump fluid to or from reservoir 44. Vacuum pump 32 applies a vacuum to tank 16, causing spent dialysate to be pulled from the patient and from deleting tank 36 into administration tank 16, but not into reservoir or drain tank 44. See *DeVries*, col. 3, line 75 to col. 4, line 11. The supplemental tank referred to in the Office Action, p. 5, lines 9-14, is deleting tank 36, part of *DeVries*' closed loop circuit, not drain tank 44. Neither

pump 50 nor vacuum pump 32 pumps fluid to or from drain tank 44. Thus, *DeVries* teaches only an uncontrolled overflow, or uncontrolled flowrates from solenoid valves, for spent dialysate to flow via gravity to spent reservoir/drain tank 44. These are not controlled flowrates as claimed.

The Office Action contends that even though overflow tank 44 is used only for spillover, it functions to provide extra fluid volume capacity to the peritoneal circuit and is not precluded by the claim language. Applicants respectfully disagree with this assertion for two reasons.

First, the flowrate from the spillover tank is not controlled. The Office Action contends that the flow control discussed at col. 2, line 56, to col. 3, line 5 of *DeVries* applies somehow to the spillover tank 44. This section, however, refers to pump 50 and flowmeter 58, for the flow of fluid in the closed loop from reservoir 16 to the patient. A controlled flowrate to or from drain tank 44 is not taught because the flowrate is not controlled, whether by the closed loop or the cyclor.

Secondly, drain tank 44 does not supply the claimed variable increase in volume capacity "to the fluid circuit allowing the system to compensate for an increase in fluid volume" during treatment, since the fluid from drain tank 44 does not return to the fluid circuit, but merely drains from the circuit.

Applicants accordingly respectfully submit that the presently pending claims distinguish over the prior art cited and are in condition for allowance. The patentability of independent Claims 9, 32, 38, 45 and 55 over the *Roberts Article* and *DeVries* renders moot the obviousness rejections of claims depending from Claims 9, 32, 38, 45 and 55, that is, Claims 10-17, 33-37, 39-44, 46-54, and 56-60.

III. For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same. If questions arise during the examination of this application, Applicants request that the Examiner contact Applicant's representative with the information provided below.

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Respectfully submitted,

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